

(2) *Special adjustments.* A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by the annual adjustments provided for in paragraph (a)(1) of this section. The Owner shall submit financial statements to the PHA which clearly support the increase.

(b) *Overall Limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable (as defined in § 882.106(b)) unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section).

[43 FR 61246, Dec. 29, 1978, as amended at 44 FR 43903, July 26, 1979; 47 FR 4252, Jan. 29, 1982; 47 FR 33500, Aug. 3, 1982; 49 FR 12237, Mar. 29, 1984]

#### § 882.109 Housing quality standards.

Housing used in this program shall meet the Performance Requirements set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are proposed by the PHA and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) *Sanitary facilities—(1) Performance requirement.* The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize

an approved public or private disposal system.

(b) *Food preparation and refuse disposal—(1) Performance requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(2) *Acceptability criteria.* The unit shall contain the following equipment in proper operating condition: cooking stove or range and a refrigerator of appropriate size for the unit, supplied by either the Owner or the Family, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private system. Adequate space for the storage, preparation and serving of food shall be provided.

(c) *Space and security—(1) Performance Requirement.* The dwelling unit shall afford the Family adequate space and security.

(2) *Acceptability criteria.* The dwelling unit shall contain a living room, kitchen area, and bathroom. The dwelling unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal environment—(1) Performance requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) *Illumination and electricity—(1) Performance requirement.* Each room shall

have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) *Acceptability criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and materials—(1) Performance requirement.* The dwelling unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(2) *Acceptability criteria.* Ceilings, walls, and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition.

(g) *Interior air quality—(1) Performance requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability criteria.* The dwelling unit shall be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one openable window or other adequate exhaust ventilation.

(h) *Water supply—(1) Performance requirement.* The water supply shall be free from contamination.

(2) *Acceptability criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead-based paint—(1) Purpose and applicability.* The purpose of this paragraph is to implement the provisions of section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to existing housing units for which Requests For Lease Approval are made under this part. This paragraph is promulgated under the authorization granted in 24 CFR 35.24(b)(4) and supersedes, with respect to all housing to which it applies, the requirements prescribed by subpart C of 24 CFR part 35. The requirements of paragraph (i)(4) of this section are applicable to units for which initial inspection under § 882.209(h)(1) or periodic inspection under § 882.211(b) is made on or after May 1, 1987. The requirements of this paragraph do not apply to 0-bedroom units. The requirements of subpart A of 24 CFR part 35 apply to all units constructed prior to 1978 covered by a Housing Assistance Payments Contract under this subpart.

(2) *Definitions—Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

*Chewable surface.* All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, windowsills and frames, doors and frames, and other protruding woodworks.

*Defective paint surface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

*Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

*Lead-based paint.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm<sup>2</sup>.

(3) *Defective paint.* In the case of a unit, for a Family which includes a child under the age of seven years, which was constructed prior to 1978, the initial inspection under § 882.209(h)(1), and each periodic inspection under § 882.211(b), shall include an inspection for defective paint surfaces. If defective paint surfaces are found, treatment as required by 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211(b)-(c), as appropriate. Correction of defective paint conditions discovered at periodic inspection shall be completed within 30 days of PHA notification to the Owner. When weather conditions prevent completion of repainting of exterior surfaces within the 30 day period, repainting may be delayed, but covering or removal of the defective paint must be completed within the prescribed period.

(4) *Chewable surfaces.* In the case of a unit constructed prior to 1978, for a Family which includes a child under the age of seven years with an identified EBL condition, the initial inspection under § 882.209(h)(1), or a periodic inspection under § 882.211(b), shall include a test for lead-based paint on chewable surfaces. Testing shall be conducted by a State or local health or housing agency, an inspector certified or regulated by a State or local health or housing agency or an organization recognized by HUD. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm<sup>2</sup> or higher using an XRF shall be considered positive for presence of lead-based paint. Where lead-based paint on chewable surfaces is identified, covering or removal of the paint surface in accordance with 24 CFR 35.24(b)(2)(ii) shall be required in accordance with § 882.209(h) or § 882.211 (b) and (c), as appropriate, and correction shall be completed within the time limits set forth in paragraph (i)(3) of this section.

(5) *Abatement without testing.* In lieu of the procedures set forth in (4) above, the PHA may at its discretion, forego testing and require the owner to abate all interior and exterior chewable surfaces in accordance with the method set out at 25 CFR 35.24(b)(2)(ii).

(6) *Tenant protection.* the owner shall take appropriate action to protect tenants from hazards associated with abatement procedures.

(7) *Records.* The PHA shall keep a copy of each inspection report for at least three years. If a unit requires testing or if the unit requires treatment of chewable surfaces based on the testing, the PHA shall keep indefinitely the test results and, if applicable, the owner certification of treatment. The records shall indicate which chewable surfaces in units have been tested and which chewable surfaces in the units have been treated. If records establish that certain chewable surfaces were tested or tested and treated in accordance with the standards prescribed in this section, such chewable surfaces do not have to be tested or treated at any subsequent time.

(j) *Access—(1) Performance requirement.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability criteria.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and neighborhood—(1) Performance requirement.* The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary condition—(1) Performance requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability criteria.* The units and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing—Performance requirement.* The foregoing standards shall apply except for paragraph (b) of this section and the requirement in paragraph (c)(2) of this section for a kitchen area. In addition, the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The sanitary facilities described in paragraph (a) of this section shall be contained within the unit.

(3) The central dining facility and central kitchen shall be located within the building or housing complex and be accessible to the occupants of the congregate units, and shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner by a food service or persons other than the occupants and shall be for the primary use of occupants of the congregate units and be sufficient in size to accommodate the occupants. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(n) *Independent Group Residence—Performance requirement.* The foregoing standards shall apply except for paragraphs (a), (b), (c), (f), (k), and (m) of this section. In addition, the following standards shall apply: (1) The unit shall contain and have ready access to a flush toilet which can be used in privacy, a fixed basin with hot and cold running water, and a shower and/or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human wastes. These facilities shall utilize an approved public or private disposal system, and shall be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment shall provide access to all sanitary facilities, and shall provide, as appropriate to needs of the occupants, basins and toilets of appropriate height; grab bars to toilets, showers and/or bathtubs; shower

seats; and adequate space for movement.

(2) The unit shall contain suitable space to store, prepare and serve foods in a sanitary manner. A cooking stove or range, a refrigerator(s) of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water shall be present in proper operating condition. The sink shall drain into an approved private or public system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space shall be within the unit, and the unit shall contain at least one bedroom of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. All emergency and safety features and procedures shall meet applicable State and local standards.

(4) The unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment. Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be

maintained in safe and operating condition. Units accommodating physically handicapped occupants with wheelchairs and other special equipment shall not contain architectural barriers which impede access or use, and handrails and ramps shall be provided as appropriate.

(5) The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants, and shall not be subject to serious adverse environmental conditions, natural or man-made, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibrations or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards. The unit shall be located in a residential setting and be similar in size and appearance to housing generally found in the neighborhood, and be within walking distance or accessible via public or available private transportation to medical and other appropriate commercial and community service facilities.

(6) *Supportive services.* (i) A planned program of adequate supportive services appropriate to the needs of the occupants shall be provided on a continual basis by a qualified Resident Assistant(s) residing in the unit, or other qualified person(s) not residing in the unit, who will provide such services on a continual, planned basis. Supportive services which are provided within the unit may include the following types of services: Counseling; social services which promote physical activity, intellectual stimulation and/or social motivation; training or assistance with activities of daily living including house-keeping, dressing, personal hygiene and/or grooming; provision of basic first aid skills in case of emergencies; supervision of self-administration of medications, diet and nutrition; and assurance that occupants obtain incidental medical care, as needed, by facilitating the making of appointments at, and transportation to, medical facilities. Supportive services provided within the unit shall not include the

provision of continual nursing, medical or psychiatric care.

(ii) The provision and quality of the planned program of supportive services, including the minimal qualifications, quantity and working hours of the Resident Assistant(s) living in the unit or other person(s) providing continual supportive services, shall be initially determined by the Service Agency in accordance with the standards established by the State. Compliance with these standards by the Service Agency shall be regularly monitored throughout the term of the Contract by the PHA and the State (e.g., Department of Human Resources, Mental Health, Mental Retardation, Social Services, etc.), or a local authority (other than the Service Agency providing services) designated by the State to establish, maintain and enforce such standards.

(iii) A written Service Agreement, approved by the State and in effect between the Owner and the Service Agency and/or the entities which provide the necessary supportive service, shall be submitted to the PHA with the request for Lease approval. The Lease between the eligible individual and the Owner shall set forth the Owner's obligation for and means of providing these services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease and shall be approved by the State. (See § 882.209(j) (2).)

(7) *State approval.* Independent Group Residences shall be licensed, certified or otherwise approved in writing by the State (e.g., Departments of Human Resources, Mental Health, Retardation, Social Services, etc.) prior to the execution of the initial Contract. This approval shall be reexamined periodically based on a schedule established by the State.

To assure that facilities and the supportive services are appropriate to the needs of the occupants, the State shall also approve the written Service Agreement (or Leases, if the provider of services is the lessor) for each Independent Group Residence. (See § 882.209(j)(2).)

(o) *Manufactured Home—(1) Performance requirement.* A Manufactured Home unit, whether owner or renter

occupied, shall comply with the foregoing standards except for paragraph (m) of this section, Congregate Housing, and paragraph (n) of this section, Independent Group Residences. In addition, a Manufactured Home unit shall:

(a) Meet the definition of a Manufactured Home set forth in § 882.102,

(b) Be equipped with at least one smoke detector in working condition, and

(c) Must be placed on the site in a stable manner and be free from hazards such as sliding or wind damage.

(2) *Acceptability criteria.* A Manufactured Home must be securely anchored by a tie-down device which distributes and transforms the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

(p) *Single Room Occupancy (SRO) Unit—Performance requirements.* (1) The foregoing standards shall apply except for paragraphs (a), (b), (c), (m), (n), and (o).

(2) Each SRO unit shall be occupied by no more than one person.

(3) Exterior doors and windows accessible from outside the SRO unit must be able to be locked.

(4) Sanitary facilities, space and security shall meet local code standards for single room occupancy housing. In the absence of applicable local code standards, the requirements for habitable rooms used for living and sleeping purposes contained in the American Public Health Association's Recommended Housing Maintenance and Occupancy Ordinance shall be used.

(q) *Shared Housing—(1) Applicability of housing quality standards to entire unit.* The entire unit must comply with the Performance Requirements and Acceptability Criteria, as provided in paragraphs (a) and (b) of this section and in paragraphs (d) through (l) of this section.

(2) *Facilities available for Family.* The facilities available for the use of each assisted Family in Shared Housing under the Family's Lease must include (whether in the Family's Private Space or in the Common Space) a living room, sanitary facilities in accordance with paragraph (a), and food preparation and refuse disposal facilities in accordance with paragraph (b).

(3) *Space and security—(i) Inapplicability of paragraph (c).* Paragraph (c) of this section does not apply to Shared Housing.

(ii) *Performance requirement.* The entire unit must provide adequate space and security for all its occupants (whether assisted or unassisted). The total number of occupants in the unit may not exceed 12 persons. Each unit must contain Private Space containing at least one bedroom for each assisted Family, plus Common Space for shared use by the occupants of the unit. The Private Space for each assisted Family must contain at least one bedroom for each two persons in the Family. (The two preceding sentences do not apply to the case of two individuals sharing a one-bedroom unit. However, in that situation, no other persons may occupy the unit.) Common Space must be appropriate for shared use by the occupants. If any members of the Family are physically handicapped (as of the time of lease approval), the unit's Common Space and the Family's Private Space must be accessible and usable by them.

(iii) *Acceptability criteria.* The unit must contain a living room, a kitchen, bathroom(s), and bedroom(s). Persons of opposite sex, other than husband and wife or very young children, may not be required to occupy the same bedroom. Exterior doors and windows accessible from outside the unit must be lockable.

(r) *Smoke detectors—(1) Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an

alarm system connected to the smoke detector installed in the hallway.

[43 FR 61246, Dec. 29, 1978, as amended at 44 FR 21630, Apr. 11, 1979; 44 FR 65364, Nov. 9, 1979; 49 FR 12237, Mar. 29, 1984; 50 FR 9269, Mar. 7, 1985; 50 FR 38794, Sept. 25, 1985; 51 FR 21309, June 11, 1986; 51 FR 24324, July 3, 1986; 52 FR 1893, Jan. 15, 1987; 52 FR 9828, Mar. 27, 1987; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar. 10, 1988; 53 FR 20801, June 6, 1988; 57 FR 33851, July 30, 1992]

**§ 882.110 Types of housing.**

(a) Any type of Existing Housing meeting the housing quality standards may be utilized under this part, except nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services. Examples of Existing Housing which may be utilized include, but are not limited to, privately owned apartments, houses and congregate housing units; existing FHA insured. Section 202 direct loan. Farmers Home Administration (FmHA) insured or direct loan, or VA guaranteed properties; properties held by the Secretary, or properties sold by the Secretary on which the Secretary has taken back a purchase money mortgage. Eligible types of Independent Group Residences include, but are not limited to, self-contained apartments and houses: *Provided*, They meet the requirements of § 882.109(n).

(b) Congregate housing may be utilized for eligible elderly, handicapped, disabled or displaced families or individuals. Independent Group Residences shall be utilized for eligible elderly, handicapped or disabled Families or individuals which require a planned program of continual supportive services.

(c) SRO Housing may be utilized if:

(1) The property is located in an area in which there is a significant demand for SRO units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the use of SRO units for such purpose; and

(3) The unit of general local government and local PHA certify to HUD that the property meets applicable local health and safety standards.

(d) In any Section 221(d)(3) below market interest rate (BMIR) or market interest rate (MIR), Section 202, Section 236 (insured or non-insured), FmHA Section 515 interest credit project: (1) Units receiving assistance under the Section 23 or rent supplement programs may continue to receive such assistance or, upon conversion of the Section 23 units to Section 8, the occupants may receive assistance under Section 8, and (2) the occupants of units not receiving such assistance may receive Section 8 assistance, provided that the total number of units in the project covered by Housing Assistance Payments Contracts under Section 8 or receiving Section 23 rental assistance, rent supplement assistance, Section 236 "deep subsidy" rental assistance payments, or State or local subsidy (other than property tax exemption or abatement) does not exceed 40 percent of the total number of units in the project. Upon request, this limitation may be exceeded for the purpose of relieving hardship of a particular Family or Families only with the approval of the Field Office Manager. Prior to granting such an approval, the Field Office Manager will review the request to determine whether assistance under part 886, subpart A, "Additional Assistance Program for Projects with HUD-insured and HUD-held Mortgages" is more appropriate and whether such assistance can be scheduled.

(e) For any Section 221(d)(3) BMIR, Section 202, Section 236 (insured or noninsured), or FmHA Section 515 interest credit unit or any State or locally subsidized unit, the housing assistance payment shall be the amount by which the rent payable by the Eligible Family under Section 23 or Section 8 is less than the subsidized rent (which subsidy shall not be reduced on account of any Section 23 or Section 8 assistance).

(f) In no event may any occupant receive the benefit of more than one of the following: rent supplement, Section 23 housing assistance, Section 8 housing assistance, or Section 236 "deep subsidy" rental assistance payments.

(g)(1) Housing assistance may not be provided on behalf of a housing Owner. However, assistance may be provided on behalf of a member of a cooperative.